

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STEVEN P. FLEMING,	:	Civil No. 1:10-cv-01565
	:	
Plaintiff	:	(Chief Judge Kane)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
LACKAWANNA COUNTY,	:	
CITY OF SCRANT,	:	
COUNTY & DISTRICT COURTS,	:	
	:	
Defendants	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Presently pending before the Court is the report of Magistrate Judge Smyser recommending that this civil action be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). (Doc. No. 13 at 5.) In response, Plaintiff has filed a document styled “Motion for Impartial Judge, Jury Required,”¹ which the Court will construe as objections to Judge Smyser’s report and recommendation.² (Doc. No. 14.)

On July 28, 2010, Plaintiff filed a pro se complaint in this matter. (Doc. No. 1.) The complaint lists various claims, but the allegations in support of these claims are unclear. On August 11, 2010, Plaintiff filed a motion to proceed in forma pauperis. (Doc. No. 5.) On August

¹ The Court notes that on October 7, 2010, Plaintiff filed a duplicate of his “Motion for Impartial Judge, Jury Required.” (Doc. No. 15.)

² The Magistrate Act, 28 U.S.C. § 636, and Federal Rule of Civil Procedure 72(b), provide that any party may file written objections to a magistrate’s proposed findings and recommendations. In deciding whether to accept, reject, or modify the report and recommendation, the Court is to make a de novo determination of those portions of the report and recommendation to which objection is made. 28 U.S.C. § 636(b)(1).

12, 2010, Judge Smyser granted Plaintiff's motion and ordered him to file an amended complaint by September 13, 2010. (Doc. No. 6 at 8.) Judge Smyser noted that, even construing the complaint liberally, the complaint's factual allegations are "incomprehensible." (Id. at 5.) Additionally, Judge Smyser stated that to the extent that Plaintiff sought to bring a claim under 42 U.S.C. § 1983, the complaint failed to allege a violation of Plaintiff's rights caused by a policy or custom of Lackawanna County or the City of Scranton. (Id. at 6.) Judge Smyser further noted that Plaintiff's claims against "County Courts" were barred by the Eleventh Amendment, and a Bivens action could not be brought against a United States District Court. (Id.)

On August 20, 2010, Plaintiff filed a document titled "Amended Complaint" with the subheading "Response to August 12, 2010 Order." (Doc. No. 7.) The document fails to assert any claims or factual allegations. Instead, Plaintiff argues that Judge Smyser's August 12, 2010 order was incorrect. (Id.) Judge Smyser ordered that the document be stricken and again ordered Plaintiff to file an amended complaint by September 13, 2010. (Doc. No. 9 at 6.) Plaintiff failed to file an amended complaint. On October 1, 2010, Judge Smyser recommended that Plaintiff's case be dismissed pursuant to § 1915(e)(2)(B)(ii). Even construing Plaintiff's "Motion for Impartial Judge, Jury Requested" liberally, the Court is unable to deduce any legal arguments or objections to the report and recommendation. (Doc. No. 14.) Additionally, the Court finds no error in Judge Smyser's finding that Plaintiff's complaint fails to state a claim on which relief may be granted under § 1915(e)(2)(B)(ii).

ACCORDINGLY, on this 21st day of October 2010, upon consideration of Magistrate Judge Smyser's report and recommendation (Doc. No. 13) and Plaintiff's objections thereto (Doc. No. 14), it is hereby ordered that:

1. Judge Smyser's report and recommendation (Doc. No. 13) is **ADOPTED**. Plaintiff's objections (Doc. Nos. 14, 15) are **OVERRULED**.
2. Plaintiff's Motion for Criminal Investigation (Doc. No. 11) is **DENIED**.
3. Plaintiff's claims are **DISMISSED**. The Clerk of Court is directed to close the file.

S/ Yvette Kane
Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania